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OFFICE OF PETITIONS

In re Application of
Mirko LEHMANN et al.
Application No. 10/528,954
Filed: March 22, 2005
Attorney Docket No 4587-048041

DECISION ON PETITION

This is a decision on the petition, filed August 11, 2008, under 37 CFR 1.181 to withdraw the holding of abandonment and under the unintentional provisions of 37 CFR 1.137(b) to revive the above-identified application

The petition under 37 CFR 1.137(b) is **GRANTED**.

The petition under 37 CFR 1.181 is **DISMISSED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before June 19, 2008, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed March 19, 2008. Accordingly, the date of abandonment of this application is June 20, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the publication fee of \$300, (2) the petition fee of \$1540; and (3) a proper statement of unintentional delay. Accordingly the publication fee is accepted as having been unintentionally delayed.

The publication fee of \$300 as well as the petition fee of \$1540 has been charged to deposit account 23-0650.

The petition further included a reply which was a petition to withdraw the holding of abandonment which asserted there was a standing authorization to make payment of the correct fees from the Deposit account referencing 37 CFR 1.311(b).

37 CFR 1.311(b) provides that:

1.311 Notice of Allowance.

(b) An authorization to charge the issue fee or other post-allowance fees set forth in § 1.18 to a deposit account may be filed in an individual application only after


mailing of the notice of allowance. The submission of either of the following after the mailing of a notice of allowance will operate as a request to charge the correct issue fee or any publication fee due to any deposit account identified in a previously filed authorization to charge such fees:

- (1) An incorrect issue fee or publication fee; or
- (2) A fee transmittal form (or letter) for payment of issue fee or publication fee.

However while review of the application confirms that a fee transmittal form or letter, PART B-FEE(S) TRANSMITTAL, filed May 30, 2008 indicated not only the above identified issue fee but also the publication fee, i.e. \$300, was being submitted with payment by credit card, such also confirms that the neither the Electronic Patent Application Fee Transmittal and the Electronic Acknowledgment Receipt of May 30, 2008 included such payment of the publication fee, i.e. the payment of \$0 rather than \$300, due to oversight on the part of Mr. McIlvaine's assistant nor did any other previously filed charge authorization, e.g. previously filed fee transmittals, authorize the charge of "such fees", i.e. authorize the charge of the issue fee or other post allowance fees and/or fees set forth in 1.18. As, there was no standing authorization to charge the publication fee in compliance with 37 CFR 1.311(b) of record in the application prior to June 20, 2008, the request to withdraw the holding of abandonment under 37 CFR 1.181 is dismissed.

Telephone inquiries concerning this decision should be directed to Karin Reichle at (571) 272-6051.

This application is being referred to Publishing Division for processing into a patent.



David Bugci
Petitions Examiner
Office of Petitions